

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELTA ETA CORPORATION,	§
	§
Plaintiff Below,	§ No. 9, 2010
Appellant/Cross-Appellee,	§
	§ Court Below – Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
UNIVERSITY OF DELAWARE,	§ C.A. No. 07C-04-580
	§
Defendant Below,	§
Appellee/Cross-Appellant.	§

Submitted: July 21, 2010

Decided: July 29, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**O R D E R**

This 29th day of July, 2010, it appears to the Court that:

1) Delta Eta Corporation (“Delta Eta”), a housing corporation affiliated with the Pi Kappa Alpha fraternity chapter at the University of Delaware (the “University”), entered into a long-term lease (“Chapter House Lease”) with the University for a portion of the University’s property on which a house for the fraternity chapter (“Chapter House”) was to be constructed. On August 5, 2005, the University notified Delta Eta that it was exercising its option to terminate the original lease, effective June 30, 2006.

2) Pursuant to the reimbursement schedule arranged in connection with the termination of the lease (“Reimbursement Schedule”), Delta Eta retained A.R. Hughes & Company (“Hughes”) to appraise Delta Eta’s remaining leasehold interest. The University acquiesced to the selection of Hughes, as the appraiser was subject to the University’s approval. Hughes completed the original appraisal on June 7, 2006, concluding that Delta Eta’s remaining leasehold interest had a value of \$800,000. After subtracting from the appraisal the total amount owed to the University under the terms of the parties’ existing agreements, Delta Eta notified the University on August 31, 2006 that the University owed \$768,500. Pursuant to the Reimbursement Schedule, the University was required to tender this amount by November 29, 2006.

3) Delta Eta, in addition to demanding the \$768,500 that was owed under the Reimbursement Schedule also demanded payment for other sums to which Delta Eta claimed it was entitled. The University denied responsibility for Delta Eta’s additional claims and refused to pay Delta Eta the \$768,500 unless and until Delta Eta agreed to execute a release of all claims. Delta Eta maintained that it was not required to sign a release in order to receive the \$768,500. Although the parties exchanged

correspondence about a limited form of release, in an effort to compromise, that issue was never resolved.

4) On April 24, 2007, Delta Eta filed a five-count complaint. Count I of the complaint sought damages for non-payment of amounts due under the contracts between the parties. The University's original answer admitted it was obligated to pay Delta Eta \$768,500, but conditioned payment in exchange for a full release of all claims by Delta Eta. On July 5, 2007, Delta Eta moved for summary judgment as to Counts I, III, IV and V of the Complaint.

5) The University filed a motion to amend its answer. The University argued that subsequent to filing its original answer, the University learned that the Chapter House was infested with mold that rendered the building virtually worthless. The Superior Court granted the motion. The amended answer asserted that the University was not obligated to pay the \$768,500 and was entitled to have the original appraisal modified. On December 27, 2007, the Superior Court granted the University's motion to amend, denied Delta Eta's motion for summary judgment as to Courts III, IV, and V, and reserved decision as to Count I in order to permit Delta Eta to file an amended motion for summary judgment. On May 2, 2008, Delta Eta filed its amended motion for summary judgment.

6) By Opinion and Order dated October 31, 2008, the Superior Court granted Delta Eta's amended motion for summary judgment, finding that the University was not entitled to a modification of the original appraisal and that there was no genuine issue of material fact remaining as to Count I. The Superior Court held that the University owed Delta Eta \$768,500, the original appraised value of the Chapter House. On March 17, 2009, the parties stipulated to the dismissal of Counts II, III, IV and V, all of the remaining Counts in the complaint.

7) On September 11, 2009, the Superior Court issued a letter opinion on pre-judgment interest. Delta Eta then moved for clarification as to the date upon which interest began to accrue. On December 30, 2009, the Superior Court issued an order that stated "interest is to run from ninety days following October 31, 2008, the date on which the [Superior] Court entered an order finding for Plaintiff."

8) Delta Eta appeals the Superior Court's decision on pre-judgment interest. The University cross-appeals from the Superior Court's summary judgment decision in favor of Delta Eta and from the Superior Court's decision on pre-judgment interest.

9) We have concluded that the Superior Court's decision that granted Delta Eta's motion for summary judgment as to Count I should be

affirmed on the basis of and for the reasons stated in its opinion dated October 31, 2008.

10) Delta Eta argues that pre-judgment interest begins to accrue on the date the University should have made payment of the \$768,500, as full reimbursement for the early termination of the Chapter House Lease. The Reimbursement Schedule called for payment within ninety days of the appraised amount being communicated to the University. The ninety-day period ended on November 29, 2006, and it is from that date Delta Eta contends that pre-judgment interest runs. The University claims that payment was not due on November 29, 2006, because it had a right to insist upon a release of claims.

11) Although the University wanted to resolve all matters with Delta Eta when it made the early termination payment, the lease did not require Delta Eta to sign either a specific or a general release. The contract provides that the University will pay the reimbursement “for the early transfer of title to and possession of the Chapter House . . . .” The contract also provides “such Reimbursement shall be paid within ninety (90) days of the date when the amount thereof has been established and communicated to the University.” The “established Reimbursement” was defined as “an

amount calculated as follows: [setting forth appraisal procedure].” The amount was calculated to be \$768,500.

12) In a Delaware action based on breach of contract or debt, pre-judgment interest is awarded as a matter of right.<sup>1</sup> “The general rule is that interest starts on the date when payment should have been made.”<sup>2</sup> Applying the foregoing principles to this case, we hold that since the reimbursement amount was established on August 31, 2006, pre-judgment interest should have been awarded from November 29, 2006 (ninety days after August 31, 2006).

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are affirmed in part and reversed in part. This matter is remanded for further proceedings in accordance with this order.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>1</sup> *Metro. Mut. Fire Ins. Co. v. Carmen Holding Co.*, 220 A.2d 778, 781-82 (Del. 1966); *Moskowitz v. Mayor and Council of Wilmington*, 391 A.2d 209, 211 (Del. 1978); *Rollins Env'tl. Servs., Inc. v. WSMW Indus., Inc.*, 426 A.2d 1363, 1366 (Del. Super. 1980); *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 826 (Del. 1992); *Hercules, Inc. v. AIU Ins. Co.*, 784 A.2d 481, 508 (Del. 2001).

<sup>2</sup> *Metro. Mut. Fire Ins. Co. v. Carmen Holding Co.*, 220 A.2d at 782.